

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1152 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?No

STATE OF GUJARAT

Versus

KASAM HAJI KARA

Appearance:

Shri S.T.Mehta, Additional Public Prosecutor, for the Appellant.

Kum. S.S.Sagar, Advocate, for Respondents Nos.1, 2 4 and 5 (Appointed).

Shri M.J. Buddhabhatti, Advocate, for Respodnent No.3.

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 25/09/96

ORAL JUDGEMENT

The judgment and order of acquittal passed by the learned Chief Judicial Magistrate at Jamnagar on 10th March 1992 is under challenge in this appeal preferred by leave of this court under Section 378 of the Code of Criminal Procedure, 1973 (the Cr.PC for brief). By his impugned judgment, the learned Chief Judicial Magistrate at Jamnagar acquitted the respondents herein of the offences punishable under Sections 224, 225, 212 and 216 read with Section 34 of the Indian Penal Code, 1860 (the IPC for brief).

2. The facts giving rise to this appeal move in a narrow compass. Respondent No.1 herein was a detenu under what is popularly known as the COFEPOSA. He was serving his order of detention. It appears that he was shifted to Irwin Hospital on his complaint of pain in his stomach some time around 24th March 1986 and was kept in the prisoners' ward therein. He is stated to have made good his escape therefrom some time after 10.30 p.m. on 28th March 1987 with the help of police officials (respondents Nos.2 and 3 herein) and with the help of his aide (respondents Nos.4 and 5 herein). It appears that a complaint was thereupon lodged by one Jilubha Gagubhai (prosecution witness No.9 at Exh.54). It was investigated into by one Atmaram Jairam Chauhan (prosecution witness No.8 at Exh.52). On completion of the investigation, the necessary chargesheet was submitted in the Court of the Chief Judicial Magistrate at Jamnagar charging the respondents herein with the offences punishable under Sections 225, 224, 212 and 216 read with Section 34 of the IPC. It is at Exh.1 on the record of the case. It came to be registered as Criminal Case No.3769 of 1987. The charge against the respondents as the accused was framed on 21st July 1990. No accused pleaded guilty to the charge. Thereupon, they were tried. After recording the prosecution evidence and after recording the further statement of each accused under Section 313 of the Cr.PC and after hearing the parties, by his judgment and order passed on 10th March 1992 in Criminal Case No.3769 of 1987, the learned Chief Judicial Magistrate at Jamnagar acquitted all the accused of the offences with which they were charged. The aggrieved State has thereupon approached this court by means of this appeal under Section 378 of the Cr.PC after obtaining leave of this Court for questioning the correctness of the aforesaid judgment and order of acquittal.

3. It may be stated at the outset that learned Advocate Shri Buddhahatti has filed his appearance for

respondent No.3. No one has filed his appearance on behalf of the remaining respondents. At this stage, this court thought it fit to ascertain from one Advocate sitting in the courtroom, named, Kum. S.S.Sagar, whether or not she would be inclined to appear for the remaining respondents and would get herself ready at a short notice. 0 10. On her showing willingness, she has been appointed to assist this court on behalf of respondents Nos.1, 2 4 and 5.

4. Learned Additional Public Prosecutor Shri Mehta has taken me through the entire evidence on record in support of his submission that the impugned judgment and order of acquittal cannot be sustained in law. As against this, both learned Advocates Shri Buddhahatti and Kum. Sagar for the respective respondents have submitted that no case is made out for interference with the impugned judgment and order of acquittal passed by the learned trial Magistrate after careful scrutiny of the evidence on record.

5. It is unfortunate that even police witnesses have not supported the prosecution version. The complaint in this case has not been brought on record though the complainant has been examined as prosecution witness No.9 at Exh.54 on the record of the case. He has clearly stated that he did not give any complaint to the effect that the concerned prisoner had made good his escape from the prisoners' ward of Irwin Hospital at any time. Strangely enough, the witness at Exh.54 has not been declared hostile. No attempt is made to bring his complaint on record to show that what he told on oath was not a true version. When the complainant had given no complaint regarding escape of respondent No.1 herein from the prisoners' ward in Irwin Hospital, no offence can be said to have been made out by or on behalf of the prosecution against any of the respondents herein.

6. Even otherwise, no witness examined at trial has anyway supported the prosecution version. A couple of them have been declared hostile but nothing material could be elicited from their cross-examination at the instance of the prosecution agency. It transpires from the evidence of the Investigating Officer examined as prosecution witness No.8 at Exh.52 on the record of the case that the investigation in the case was also very

perfunctory in nature. He appears to have done his job as an empty formality. In fact, the entire proceeding appears to have been stage-managed to screen the real offender. This becomes clear from charging the

respondents herein with the offences punishable inter alia under Sections 224 and 225 of the IPC. The offence punishable under Section 224 relates to resistance or obstruction by a person to his lawful apprehension. It is not the case of the prosecution that the prisoner (respondent No.1 herein) resisted or obstructed to his lawful apprehension. Section 225 of the IPC relates to the offence of resistance or obstruction to lawful apprehension of another person. It is again not the case of the prosecution that respondents Nos.4 and/or 5 herein were responsible for resistance or obstruction to lawful apprehension of respondent No.1 herein. In that view of the matter, charging the concerned respondents herein with the offences punishable under Sections 224 and 225 of the IPC was baseless and presumably with deliberate non-application of mind. In fact, the concerned police officers or officials responsible for making good the escape of the prisoner (respondent No.1 herein) should have been charged with the offence punishable under Section 222 of the IPC. It appears that, with a view to screening the offenders, a baseless charge has been leveled against the offenders and no attempt is made to prove that charge.

7. In view of my aforesaid discussion, I am of the opinion that the conclusion reached by the learned trial Magistrate that the prosecution has not been able to bring the guilt home to the accused or any of them calls for no interference by this court in this appeal.

8. In the result, this appeal fails. It is hereby dismissed.

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